

Great Lakes Decorating Services, Inc. and David Dine, a Sole Proprietor d/b/a Great Lakes Industrial Decorating and a/k/a Great Lakes Industrial Decorating Services, Inc., a Single Employer and Local 1803, International Brotherhood of Painters and Allied Trades, AFL-CIO.
Case 7-CA-33685

February 24, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by the Union on September 4, 1992, and amended on September 15, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Great Lakes Decorating Services, Inc. and David Dine, a Sole Proprietor d/b/a Great Lakes Industrial Decorating and a/k/a Great Lakes Industrial Decorating Services, Inc., a Single Employer, collectively referred to here as the Respondents, alleging that they had engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondents have failed to file an answer.

On January 23, 1993, the General Counsel filed a Motion for Default Summary Judgment. On January 26, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated December 1, 1992, the Respondents were notified by the General Counsel that unless an answer was received by December 15, 1992, a Motion for Default Judgment would be filed. To date, no answer has been filed by the Respondents.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, Great Lakes Decorating, is a corporation with an office and place of business in Bay City, Michigan, where it has been engaged as a painting and decorating contractor in the construction industry doing commercial and residential construction and renovation work. Respondent, Great Lakes Industrial, is a sole proprietorship owned by David Dine. It also maintains an office and place of business in Bay City, Michigan, and has been a painting and decorating contractor in the construction industry doing commercial and residential construction and renovation work. At all material times, Great Lakes Decorating and Great Lakes Industrial have been affiliated business enterprises with common officers, ownership, management, and supervision. They also have formulated and administered a common labor policy, have shared common premises and facilities including a phone, have shared common administrative and clerical functions, including functions related to sales, purchasing, payroll, and book-keeping, and have interchanged personnel with each other. On the basis of their above-described operations, the complaint alleges, and we find, that Respondent Great Lakes Decorating and Respondent Great Lakes Industrial constitute a single integrated business enterprise, and are a single employer.

During the 12-month period ending September 4, 1992, a representative period, the Respondents, in the conduct of their business operations, collectively purchased and received at their Michigan jobsites goods valued in excess of \$50,000 from other enterprises, including West Side Decorating Center, Inc., Sherwin-Williams Company, and Glidden Paint and Wallcovering, located within the State of Michigan, each of which received the goods directly from points located outside the State of Michigan. We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about November 8, 1991, the Respondents recognized the Union as the exclusive collective-bargaining representative of their employees in an appropriate unit, without regard to whether the Union had attained majority status under Section 9 of the Act, by entering into a collective-bargaining agreement with the Union covering a period from November 8, 1992, to May 22, 1993. At all material times, the Union, by

virtue of Section 9(a) of the Act, has been the limited exclusive bargaining representative of the Respondents' employees in the following appropriate unit:

All painting and decorating employees employed by Great Lakes Decorating and by Great Lakes Industrial, but excluding guards and supervisors as defined in the Act.

On various dates since about March 4, 1992, Respondents, through David Dine,¹ told employees that they could not work on certain of the Great Lakes Decorating jobsites because of their membership in and support for the Union. Since about the same date, the Respondents have refused to employ employees, including but not limited to Michael Kramer, Michael Lindauer, and Richard Schneider, on Great Lakes Decorating jobsites because of their membership in and support for the Union. We find that by engaging in the above-described conduct, the Respondents are interfering with, restraining, and coercing employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, and is discriminating against employees with regard to their hire, tenure, and other terms and conditions of employment, thereby discouraging membership in the Union, in violation of Section 8(a)(3) of the Act.

The Respondents' collective-bargaining agreement with the Union requires, inter alia, that the Respondents file monthly reports, and that they make payments into the health and welfare and pension benefits funds established for the benefit of unit employees. Since about March 4, 1992, the Respondents, without the Union's consent, have failed and refused to submit the monthly reports, and have failed and refused to make the required payments to the health and welfare and pension benefit funds for employees employed at both the Great Lakes Decorating and the Great Lakes Industrial jobsites. The above terms and conditions of employment constitute mandatory subjects of bargaining. We find that by engaging in such conduct, the Respondents have failed and refused, and are failing and refusing, to bargain collectively and in good faith with the Union as the exclusive limited collective-bargaining representative of the unit employees within the meaning of Section 8(d), and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSIONS OF LAW

1. By telling employees that they could not work on certain of the Great Lakes Decorating jobsites, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

¹ The complaint alleges, and we find, that Dine is president of Respondent Great Lakes Decorating and owner of Respondent Great Lakes Industrial, and a supervisor and agent of the Respondents within the meaning of Sec. 2(11) and (13) of the Act.

2. By refusing to employ employees, including but not limited to employees Michael Kramer, Michael Lindauer, and Richard Schneider on Great Lakes Decorating jobsites, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

3. By failing and refusing to submit monthly reports, and failing and refusing to make payments to the health and welfare and pension benefits funds, the Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents shall be ordered to bargain collectively with the Union by submitting the contractually required monthly reports that have not been submitted since about March 4, 1992, and to make the contractually required payments to the health and welfare and pension benefits funds that have not been made since about the same date. Any additional amounts applicable to these payments shall be computed as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). The Respondents shall also be required to make whole unit employees for any expenses they may have incurred as a result of the Respondents' failure to comply with the terms of its collective-bargaining agreement, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall also order the Respondents to offer employment at the Great Lakes Decorating jobsites to any employees, including but not limited to Michael Kramer, Michael Lindauer, and Richard Schneider, who would have been hired at these jobsites but for the Respondents' unlawful conduct, and to make them whole for any loss of earnings or benefits suffered as a result of the discrimination against them, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondents, Great Lakes Decorating Services, Inc. and David Dine, a Sole Proprietor d/b/a Great Lakes Industrial Decorating and a/k/a Great Lakes Industrial Decorating Services, Inc., a single employer, Bay City,

Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Local 1803, International Brotherhood of Painters and Allied Trades, AFL-CIO, which is the limited exclusive bargaining representative of the Respondents' employees in an appropriate unit, by refusing to submit monthly reports and refusing to make payments to the health and welfare and pension benefits funds, as required by the Respondents' collective-bargaining agreement with the Union. The appropriate bargaining unit consists of:

All painting and decorating employees employed by Great Lakes Decorating and by Great Lakes Industrial, but excluding guards and supervisors as defined in the Act.

(b) Telling employees that they could not work on certain of the Great Lakes Decorating jobsites because of their membership in and support for the Union.

(c) Refusing to hire employees, including but not limited to, Michael Kramer, Michael Lindauer, and Richard Schneider, because of their membership in and support for the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Submit the monthly reports that have not been submitted since about March 4, 1992, make the payments to the health and welfare and pension benefit funds that have not been made since about the same date, and make whole unit employees for any expenses they may have incurred as a result of the Respondents' failure to comply with the terms of its collective-bargaining agreement, with interest as set forth in the remedy section of this decision.

(b) Offer employment at the Great Lakes Decorating jobsites to all employees, including but not limited to Michael Kramer, Michael Lindauer, and Richard Schneider, to the positions they would have been employed but for the Respondents' unlawful conduct or, if those positions no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings and other benefits they may have suffered as a result of the Respondents' unlawful conduct, with interest as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(d) Post at their facilities in Bay City, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 1803, International Brotherhood of Painters and Allied Trades, AFL-CIO, which is the limited exclusive collective-bargaining representative of our employees in an appropriate unit, by refusing to submit monthly reports and refusing to make payments to the health and welfare and pension benefit funds, as required by our collective-bargaining agreement with the Union. The appropriate bargaining unit consists of:

All painting and decorating employees employed by Great Lakes Decorating and by Great Lakes Industrial, but excluding guards and supervisors as defined in the Act.

WE WILL NOT tell our employees that they cannot work on certain of the Great Lakes Decorating jobsites because they support or are members of the Union.

WE WILL NOT refuse to hire employees, including but not limited to Michael Kramer, Michael Lindauer, and Richard Schneider, for the Great Lakes Decorating jobsites because of their membership in, and support for, the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, submit the monthly reports that have not been submitted since about March 4, 1992, WE WILL make the payments to the health and welfare and pen-

sion benefit funds that have not been made since about the same date, and WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure and refusal to comply with the terms of our collective-bargaining agreement with the Union, with interest.

WE WILL offer all employees, including but not limited to Michael Kramer, Michael Lindauer, and Richard Schneider, employment at the Great Lakes Decorating jobsites to the positions they would have had but for our discrimination against them or, if those positions no longer exist or are not available, to substan-

tially equivalent positions, and WE WILL make them whole for any loss of earnings or benefits they may have suffered as a result of our unlawful conduct, with interest.

GREAT LAKES DECORATING SERVICES,
INC. AND DAVID DINE, A SOLE PROPRI-
ETOR D/B/A GREAT LAKES INDUSTRIAL
DECORATING AND A/K/A GREAT LAKES
INDUSTRIAL DECORATING SERVICES,
INC., A SINGLE EMPLOYER